

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

UNION ASSET MANAGEMENT HOLDING
AG and SJUNDE AP-FONDEN, Individually
and on Behalf of All Others Similarly Situated,

Plaintiffs,

v.

THE KRAFT HEINZ COMPANY, et al.

Defendant.

Case No. 1:19-cv-01339

Honorable Robert M. Dow, Jr.

RICHARD MERRITTS, derivatively on behalf
of THE KRAFT HEINZ COMPANY,

Plaintiff,

v.

3G CAPITAL, INC., et al.,

Defendants

– and –

THE KRAFT HEINZ COMPANY,

Nominal Defendant.

Case No. 1:20-cv-02071

[Caption continued on following page.]

[PROPOSED] LEAD DERIVATIVE COUNSEL’S RESPONSE TO MICHAEL HARTLEIB’S
MOTION FOR LEAVE TO FILE AN AMICUS CURIAE BRIEF REGARDING
APPOINTMENT OF LEAD COUNSEL

DALE WATERS, Derivatively on Behalf of
Nominal Defendant THE KRAFT HEINZ
COMPANY,

Plaintiff,

v.

ALEXANDER BEHRING, et al.,

Defendants

– and –

THE KRAFT HEINZ COMPANY,

Nominal Defendant.

Case No. 1:20-cv-02072

In re KRAFT HEINZ SHAREHOLDER
DERIVATIVE LITIGATION

Case No. 1:20-cv-02259

STEVEN HILL, Derivatively on Behalf of
THE KRAFT HEINZ COMPANY,

Plaintiff,

v.

GREGORY E. ABEL, et al.,

Defendants.

– and –

THE KRAFT HEINZ COMPANY,

Nominal Defendant.

Case No. 1:20-cv-02280

[Proposed] Lead Derivative Counsel, Robbins Geller Rudman & Dowd LLP (“Robbins Geller”) and Glancy Prongay & Murray LLP (“GPM”) respectfully submit this response to Michael Hartleib’s (“Hartleib”) Motion for Acceptance of Amicus Curiae Brief in Opposition to the Appointment of Several Firms Seeking Lead. ECF No. 275. Hartleib’s motion, which attempts to rehash allegations of wrongdoing against The Weiser Law Firm, P.C. and Robbins LLP (formerly known as Robbins Arroyo LLP (“Robbins Arroyo”)), does not challenge the proposed appointment of Robbins Geller and GPM as Lead Derivative Counsel.

Courts have held that the decision whether to allow the filing of an *amicus curiae* brief is a matter of “judicial grace.” *NOW, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000); *Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003); *Clark v. Sandusky*, 205 F.2d 915, 917 (7th Cir. 1953). In its discretion, a court may permit the filing of an *amicus curiae* brief “when the amicus has an interest . . . that may be affected by the decision in the present case” or “when the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.” *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997); *see also Beesley v. Int’l Paper Co.*, No. 06-703-DRH, 2011 WL 5825760, at *1 (S.D. Ill. Nov. 17, 2011); *Chamberlain Grp., Inc. v. Interlogix, Inc.*, No. 01 C 6157, 2004 WL 1197258, at *1 (N.D. Ill. May 28, 2004).¹ Absent any demonstration that the *amicus curiae* is interested or has information useful to the Court, the motion should be denied. *Beesley*, 2011 WL 5825760, at *1; *Gabriel Techs. Corp. v. Qualcomm Inc.*, No. 08CV1992 AJB (MDD), 2012 WL 849167, at *4-*5 (S.D. Cal. Mar.

¹ A court may be more inclined to grant the motion for filing of an *amicus curiae* brief in cases involving matters of public interest. For example, “a public body clothed with powers and duties affecting the public interest and involved in the subject matter presented before the court, may be entitled to the favor of appearing as amicus curiae.” *Pratt v. Indian River Cent. Sch. Dist.*, No. 7:09-CV-0411 (GTS/GHL), 2010 WL 11681606, at *3 (N.D.N.Y. Dec. 6, 2010) (quoting 4 Am. Jur. 2d *Amicus Curiae* §3 (2007)). “However, the filing of an amicus curiae brief should not be used to address “wholly new issues not raised by the parties.”” *Id.* (quoting *Citizens Against Casino Gambling v. Kempthorne*, 471 F. Supp. 2d 295, 311 (W.D.N.Y. 2007)).

13, 2012); *Voices for Choices*, 339 F.3d at 544. Hartleib's motion to file an *amicus curiae* brief fails to demonstrate that either standard has been met.

First, Hartleib has failed to demonstrate that he is a shareholder of The Kraft Heinz Company. Without doing so, it cannot be shown that Hartleib has any "interest" that will be affected by the appointment of leadership in this case. Hartleib has not shown why he should be heard or even whether the appointment of lead counsel affects him in any way. Instead, the proposed *amicus curiae* brief appears to be a recycled effort that Hartleib has filed in other cases where The Weiser Law Firm and/or Robbins Arroyo actually were moving for lead counsel. The obvious intent of Hartleib's *amicus curiae* brief is to discredit firms that are not even moving for appointment as lead derivative counsel. *See* ECF No. 256 at 8; ECF No. 246. This is not a sufficient basis for granting leave to file an *amicus curiae* brief.

Second, Hartleib's proposed *amicus curiae* brief does not appear to help the Court in its appointment of leadership because it does not argue against the appointment of any of the proposed lead derivative counsel. Without drawing such a connection, the proposed *amicus curiae* brief is of little or no help to the Court in determining who should lead the prosecution of derivative claims against the individual defendants. Therefore, Hartleib's motion should be rejected as it will not aid the Court in making its determination on case leadership.

Accordingly, [Proposed] Lead Derivative Counsel respectfully request that the Court reject the filing of Hartleib's *amicus curiae* brief because Hartleib has not established that he has an interest in the case nor has he provided the Court with useful information.

DATED: October 13, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on October 13, 2020, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses on the attached Electronic Mail Notice List, and I hereby certify that I caused the mailing of the foregoing via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

s/ Benny C. Goodman III

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